



**MINUTES OF MEETING OF THE CITY COUNCIL
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, April 20, 2004, 8:00 p.m.**

MEETING

The Meeting of the City Council was called to order by Mayor Cooper at 8:00 p.m., followed by the Pledge of Allegiance led by Council Member Dowling.

ROLL CALL

Present: COUNCIL MEMBERS Jimenez, Quirk, Halliday, Ward,
Dowling, Henson
MAYOR Cooper

Absent: None

PRESENTATIONS: Pride in Hayward Award

The April 2004 Pride in Hayward Award was presented to the following Tennyson-Alquire neighborhood residents: Jessie and Evangelina Galzote, Montazh Lum and Yuly Lum, Chau and Thuy Tran, Jose and Dolores Romero, and Raymond and Felicidad Kwan. In presenting the award, the Mayor thanked each of them for taking pride in their homes and in the City of Hayward.

Volunteer Appreciation Week

Mayor Cooper commended and appreciated all the volunteers on behalf of the City Council in celebration of National Volunteer Week. Donna Fitzwater announced the motto for this year as "Inspire by Example." The volunteers were from Hayward Animal Services, City Hall Information Desk, Library Literacy Plus Program and Mini-Learning Center, Hayward Public Library and Friends of the Library, Hayward Police Department and Community Resource Center, Hayward Police Explorer Scouts, Hayward Police Reserve Officers, Hayward Public Safety Ambassadors, Hayward Neighborhood Alert, and Water Pollution Source Control. She indicated how their efforts help make a difference for the City of Hayward. She thanked them all for their gift of time and talents and presented them with Certificates of Appreciation. It is a very special evening when we can acknowledge them.

PUBLIC COMMENTS

Marlene Teel provided an update of the Neighborhood Alert program for the City of Hayward. She commended the Police Department in particular those in the crime prevention unit. She reported that there are 104 block captains and described the extensive training that is offered. She enumerated the various activities including National Night Out on the second Tuesday of August and that the group will be awarding a scholarship to a senior at Tennyson High School. Lastly, she asked that the board members and block captains present to stand.

Barbara Heringer-Swarr announced that there will be a rally in favor of, "Books, Not Bars,"

Alternatives for Youth, on April 28th relating to incidents at the California Youth Authority. She also announced that there are political movies shown at Chabot College on Thursdays. She urged strong consideration of the current plan related to Route 238 and spoke in opposition.

Jason Moreno stated that the fine for a citation referencing Hayward Traffic Code 6.39(a) rose from \$27 to \$100 and asked if this applied to disabled drivers parking on their lawns.

Barbara Hayson, HARD Tot Time instructor, submitted a statement that a number of HARD employees are in the process of unionizing. She emphasized the need for employees to work with dignity and respect. Mayor Cooper informed Ms. Hayson that the City of Hayward is a separate entity from HARD.

John Souza, a volunteer at HARD and who also works at the Little Theater, made comments about the hourly employees seeking to unionize so that the workers can have a voice. He stated that with the budget crisis HARD employees need a voice.

CONSENT

Item 2 was removed for further discussion.

1. Approval of Minutes of the City Council Meeting of April 13, 2004

It was moved by Council Member Ward, seconded by Council Member Dowling, and unanimously carried to approve the minutes of the City Council Meeting of April 13, 2004.

2. Industrial Parkway Southwest Widening Project - Approval of Plans and Specifications and Call for Bids

Staff report submitted by Deputy Director of Public Works Bauman, dated April 20, 2004, was filed.

Council Member Dowling was glad that this gateway to the City was being improved, but expressed his concern with the trash and debris in the area including the flood control channel. He asked if staff could coordinate with the county flood control district to maintain it.

It was moved by Council Member Dowling, seconded by Council Member Henson, and carried unanimously, to adopt the following:

Resolution 04-052, "Resolution Approving Plans and Specifications for the Industrial Parkway Southwest Widening Project, Project No. 5199, and Call for Bids"

HEARINGS

3. Appeal of Planning Commission Approval of PL-2004-0039 Use Permit – PacLand/Batavia Holdings (Applicant) / Frank J. Warn, Inc. (Owner) – Request for a Retail Center to



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Accommodate a Regional Retail Building (Circuit City) with Two Retail Shops Buildings – The Project Is Located at 2480 Whipple Road

Staff report submitted by Principal Planner Patenaude, dated April 20, 2004, was filed.

Council Member Halliday announced that she served on the Planning Commission when this project was considered and noted that she was willing to consider the project again with an unbiased opinion. Mayor Cooper asked the owner, developer, as well as the appellant, if they agreed with Council Member Halliday's comments. With their consent, she remained on the dais.

Principal Planner Patenaude stated that the Planning Commission unanimously approved the Circuit City development. He stated that the property site is currently a trucking facility. He displayed the view from the Target parking lot, outlined the elevations, square footage and accesses to the site. He also highlighted several of the conditions of approval.

In response to Council Member Henson's question, Public Works Director Butler reported that staff had completed a traffic study. He reviewed the improvements that were completed to provide for the Target development. He outlined the traffic improvements that were implemented and the levels of service throughout the day.

Council Member Henson commented that the City has responded to the concerns of the Planning Manager of Union City and asked staff to explain Condition # 5.

Public Works Butler stated that a double left turn currently exists and will continue to exist. There are similar configurations within other areas of the City, which have worked successfully.

Council Member Dowling asked if consideration was made to include a condition for trash and litter pickup, in particular if a food business is included in the project.

Principal Planner Patenaude responded that such provisions are a part of the Zoning Ordinance, but a condition can be included for this project.

In consideration of the adjacent mobile home park residents, Council Member Dowling asked if there were conditions to restrict deliveries to Circuit City to certain hours and asked if there will be night deliveries.

Principal Planner Patenaude stated that the applicant could answer that specific question. He reported that an 8-foot, solid wall will be installed adjacent to the neighboring mobile homes.

Jim Towlsee, representing the applicant, stated that there will be deliveries between 6:00 a.m. and 10:00 p.m., which he stated is less of an impact than the current situation on the property.

Council Member Quirk asked if there were any plans to close the Circuit City at Hesperian and Winton.

Jim Towslee stated that he was not familiar with the project, but noted that in comparison to older stores, this will be a new prototype store that will be somewhat larger than existing stores and rather similar to a Best Buy Store.

Council Member Jimenez asked who will be responsible for the installation of the traffic signal as that is a large cost. Public Works Director Butler replied that it would be the responsibility of the developer.

Council Member Ward referred to the letter from the City of Union City Planning Manager and asked for further clarification related to the intersection for entering the freeway.

Public Works Director Butler stated that there are no plans to widen Whipple Road. He reported that there are a number of improvements as a result of this project that will enhance the current improvements that were completed when Target was developed.

Council Member Ward asked about the elevations and the landscaping plan.

Principal Planner Patenaude showed the north elevation of the main building with the color schemes and the logo sign. He described the parking lot with having more trees in the medians, a pedestrian path that will be a treated, dedicated walkway leading to AC transit stops.

Mayor Cooper opened the public hearing at 8:58 p.m.

Gloria Neu stated that she resides in Union City and appealed the Planning Commission decision. She commented on the number of businesses already in the area that are heavily impacting traffic. She stated that this project interferes with the existing school bus system on Amaral Court. She referred to a petition that was previously submitted. She suggested a larger setback for this developer. In her opinion, this was an overwhelming project.

Principal Planner Patenaude reiterated that there will be no access from this project to Amaral Court and there will be a solid masonry wall between the project and the mobile home property line.

Patricia Foster stated that she lives just a few homes nearest the freeway wall. She reiterated concerns and asked that there be limited access through the back end for delivery trucks. She commented on the congestion and impacts of traffic on her neighborhood. When asked by Council Member Henson what usage would please the neighborhood, she stated that no additional commercial businesses should be permitted.

Discussion ensued with Council asking questions to the appellant regarding the appeal, including whether there was involvement with the planning of the Union Landing development and the Dyer intersection.



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Joan Mallory, Union City Planning Manager, reported that she was representing the City Council and City Manager of Union City to express their concerns about the traffic generation and traffic planning at this development. She cited the letter previously submitted. She stated that she would be interested in reviewing an engineered plan that demonstrates how these traffic improvements will actually serve the area. She expressed concern about the left-hand turn lanes across the medians that do not exist. Also she was at issue with the right turn in and right turn outs of the project. Perhaps the City should consider acquiring or having dedicated land to accommodate a future lane in that area. She noted that this is a heavily traveled truck route and is a primary route used by both cities. The intersection seems to be overburdened at this time and backups occur on the 880 freeway during peak hours in the evenings. As this area develops, she hoped the City would consider additional mitigations to this project in concern for future development.

Council Member Ward asked Ms. Malloy if she was involved in the Dyer project. He strongly felt that most of the traffic in this vicinity is from the Union Landing facility. He did not see a reason for the City to acquire additional land for improving traffic that is largely caused by that shopping center. He suggested that both communities participate in the acquisition for any future traffic mitigation improvements.

Jim Towslee, holding the traffic study, stated that this study was scoped, in consultation with City staff and prepared by local professional engineers who also prepared the traffic study for Target. He emphasized that is the only evidence that states that the traffic situation is not degraded with the implementation of this project and the proposed mitigations. He reported that Circuit City is paying for the mitigations and recognizes the need for the traffic signal. Target will cooperate for the improvements. He noted that the Planning Commission imposed the masonry wall as a condition of approval for the project. The current truck facility has more truck usage than what is planned for this project. He indicated that there was disappointment with the appeal, but was confident that the project has met the burden of appeal. He reported that marketing efforts for additional tenants were limited due to the appeal, but there are no plans for a drive-through eatery and the size may not accommodate a restaurant. He noted that there is strong interest from national coffee companies.

Greg Warn, property and business owner of Crescent Truck Company stated that his family had this business for many years with over 100 trucks going in and out all day. He has worked with the developer on the driveways and urged approval of the project. When asked by Council Member Henson where he will be moving, he stated that their trucks will be parked at the See's Candy plant in South San Francisco.

Thomas M. Almond, 76 Service Station owner, clarified some comments made by others. He stated that the intersection was widened with improvements that included red curbs and a turn lane that allows for entrance into his station. He pointed out that there are three lanes towards Dyer Street. He emphasized that he has two clean-ups twice a day. He commented on the improvements that will enhance the area once Crescent leaves. He reported that he would be improving his station in the next year or so. He spoke highly in favor of the project.

Jason Moreno spoke in opposition to the project and urged citizens to consider other options.

Mayor Cooper closed the public hearing at 9:32 p.m.

Council Member Henson moved to deny the appeal and uphold the Planning Commission's approval with the attached conditions of approval as the City has performed its due diligence in addressing the needs for traffic mitigations. He thanked all who spoke. He confirmed that he did not see any reason to overturn the Planning Commission's decision.

Council Member Dowling seconded the motion and stated that he appreciated the neighbors coming, but urged them to consider the fact that this is becoming a more commercial area. This industrial area will have a lot less truck activity with this development. He reiterated that the mobile home neighborhood will not be impacted by traffic from this development.

It was moved by Council Member Henson, seconded by Council Member Dowling, and unanimously carried to adopt the following:

Resolution 04-053, "Resolution Denying the Appeal and Upholding the Planning Commission's Approval of Use Permit PL-2004-0039"

4. Appeal of Conditions of Approval Imposed by the Planning Commission Approval of Administrative Use Permit - Application No. 2003-0576 to Allow Truck and Bus Driving School – Moe Janda (Applicant/Owner) – The Property is Located at 2977 Baumberg Street, in an Industrial District

Staff report submitted by Principal Planner Patenaude, dated April 20, 2004, was filed.

Council Member Halliday stated that she was serving on the Planning Commission when this matter was considered. She was confident that she could evaluate and act on it in an unbiased manner solely on the evidence and testimony presented to Council. With the applicant's consent, she remained on the dais.

Principal Planner Patenaude made the staff report, noting that the operation is a truck driving school since 2001 without the required use permit. He described the operations of the business that includes classroom instruction. He noted that the current property is not paved on Baumberg Street. He reiterated the conditions of approval that require replacement of the modular building with a permanent one that meets the City's design guidelines, new landscaping and fencing, and the required street improvements to bring in utilities to be completed in 90 days.

The applicant has appealed due to the timeframe for compliance with the City's design guidelines and has asked for seven to nine months to prepare plans and construction completion in 2005. Principal Planner Patenaude noted that generally, a business of this type must comply with the City's zoning ordinance prior to operating its business and allowing additional time would be considered a special privilege not extended to other developers in the industrial district. He briefly described the project and noted that this was the first time that staff has spoken with an engineer regarding this site. Staff is recommending denial of the appeal.



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Council Member Ward asked if the applicant was aware of the appeal process and review.

Principal Planner Patenaude reported the applicant's involvement with the City. He moved in 2002, and worked with the building department. In October 2003, he was notified of the required permit.

Council Member Henson asked for clarification on the appeal process. City Attorney O'Toole stated that the entire project is open to review by the Council, not just the specific concern in the appeal. Council Member Henson asked staff if there was anything that was cumbersome for this timeline. It was reported none. It was also noted that staff had originally opposed this as an improper site.

Council Member Quirk asked what the applicant was told in 1997 and whether the applicant was informed that he needed a use permit. Staff noted that the applicant was informed but he decided to open an office only. In 2001, he notified the business license office of his change of address.

Council Member Jimenez pointed out that the applicant is requesting relief of Condition #19. In response, City Manager Armas clarified that the requirement for the sewer connection is not formally listed in the appeal, but staff does not think it a good idea as it could cause problems if not included.

Council Member Halliday discussed the start date for the 90 days and asked if there would be a new start date if Council grants that today. City Attorney O'Toole advised that the 90-day count starts when the Council's action becomes final.

Mayor Cooper opened the public hearing at 9:50 p.m.

Moe Janda, the business and property owner, noted that he had an engineer present who would speak to details afterwards. He responded to Council questions related to his use permit, business license and operations. His previous 1997 business license was for another site. In 2001, he requested a transfer of the business license to this site. He felt that 90 days was not enough time. He described the site of his property and pointed out that there are modulares on the site and the property is graveled at a four-to-six-inch level. In response to Council Member Henson's question he described that a student attends 30-40 hours of classroom instruction in a modular and practices parking and backing up in the yard with his six or seven vehicles. He said he wanted to pave the property within a year. He stated that he would need about 180 days to construct and install the sewer line, and then he would construct the building when the lease to the modular expires in August 2006. He stated that he was not aware that he was required to obtain a use permit for the modular, as it was originally on wheels and in an industrial area.

Kevin Nickolas, Center Line Land Surveying, stated that his firm became involved with the project in February. Due to his workload, his firm has been involved in the last 30 days. He felt that the project lacked clear direction. As the civil engineer for this project, he felt that the applicant could construct the site and building improvements if they could be separated, as it would be financially more feasible. He understood that the applicant needs 180 days to construct the site improvements and install the sewer line. Then the applicant could construct the new building when the lease for the modular expires

in August 2006.

Council discussion included how much time the applicant was asking beyond the Planning Commission's 90-day requirement and what would the consequences would be if the project was not completed within that timeframe. City Attorney O'Toole reported that Council could consider revocation proceedings for this use permit.

Council Member Dowling asked the applicant if he was able to complete the project in the 90 days required by the Planning Commission. Mr. Janda stated that this would be a financial hardship, but agreed to complete his project within 180 days.

Council Member Ward was sympathetic to his position, but was rather disappointed that no planning work nor engineering plans have been completed nor submitted. He asked staff if any plans had been received.

Kevin Nickolas stated that some plans has been submitted, but to the building department and not the Planning department. He submitted a copy to City Manager Armas.

Principal Planner Patenaude reported that he had not reviewed any plans from Mr. Janda. He reiterated that the Planning Commission required the applicant to submit plans for approval within 30 days for the site improvements and for the permanent building. He would need to obtain a building permit for the permanent building within 60 days, complete the site improvements within 90 days and complete construction of the permanent building within one year.

Council Member Ward, in an effort to accommodate the applicant, asked staff to identify specific days that might be acceptable to staff if the Council decided to provide additional time.

City Manager Armas suggested that, as some material was just presented, the Council continue this matter to next week.

Members of the Council urged the applicant to take an affirmative advantage of the continuance, and use the time to develop and present a project that staff has requested, which includes the site improvements, construction plans and timeframe as previously discussed.

Council Member Dowling cautioned the developer to work with staff and asked staff to monitor the completion of this development as the Council will not provide any further extensions. This part of Baumberg already looks bad and this business had been operating for three years without making any improvements to that area.

Mayor Cooper closed the public hearing at 10:10 p.m.

It was moved by Council Member Ward, seconded by Council Member Henson, and unanimously carried to continue the public hearing to April 27, 2004. No resolution adopted.

COUNCIL REPORTS



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There were no Council Reports.

ADJOURNMENT

Mayor Cooper adjourned the meeting at 10:13 p.m., in memory of community activist, Art Kealy, member of St. Joachim's parish. He was a champion for social justice and a huge asset to this community.

Mayor Cooper also adjourned this meeting in memory of Isabel Silva, retired employee of the City of Hayward Landscape and Maintenance Division. Mrs. Silva, 62, a life long resident, worked for the City for 29 years. She is survived by her husband of 40 years, Basil Silva Sr., three children and many grandchildren. At the request of her co-workers, a tree will be planted in her memory.

APPROVED:

Roberta Cooper, Mayor, City of Hayward

ATTEST:

Angelina Reyes, City Clerk, City of Hayward